REGISTERED No. D. 221

The Gazette of India

EXTRAORDINARY

PART II—Section 3

PUBLISHED BY AUTHORITY

No. 37] NEW DELHI, TUESDAY, JANUARY 22, 1957

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi-2, the 12th January, 1957

S.R.O. 272.—Whereas the election of H. H. Raja Harinder Singh, as a member of the Legislative Assembly of the State of Pepsu, from the Faridkot constituency has been called in question by an election petition duly presented under Part VI of the Representation of People Act, 1951 (XLIII of 1951), by Shri Karnail Singh s/o Narain Singh, Dodan Street, Faridkot, Pepsu;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the Provisions of section 86 of the said Act, for the trial of the said election petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order to the Commission;

Now, therefore, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby published the said order of the Trbunal.

On an appeal filed by H.H. Raja Harinder Singh the Supreme Court of India has set aside the said order of the Tribunal declaring the election of the successful candidate to be void *vide* the Supreme Court's judgment dated the 20th December, 1956 (Annexure I).

ELECTION TRIBUNAL, BHATINDA

S. Karnali Singh S/o S. Naram Singh of Faridkot. .....

Versus

1. H.H. Raja Harinder Singh, Raj Mahal, The Mall, Faridkot.
2. S. Pritam Singh, Village Gumati Khurd.
3. S. Sunder Singh, Harinder Nagar, Faridkot.
4. S. Naib Singh, C/o The Gondara Transport Co. Ltd., Faridkot.
5. S. Sandhur Singh, Village Mani Singh Wala.
6. S. Umrao Singh, Controller H.H.'s Personal Estate Faridkot.
7. S. Mukhtiar Singh, village Qila Nau.
8. S. Gurdial Singh, Mehmuana House, Faridkot.
9. S. Sardul Singh, Harinder Nagar, Faridkot.....*Respondents.*

Chhakan Lal—*Chairman.*

Kul Bhushan and G. M. Kekre—*Members.*

ELECTION PETITION NO. 14 OF 1954 PRESENTED UNDER THE PROVISIONS OF PART VI CHAPTER II OF THE REPRESENTATION OF THE PEOPLES ACT, 1951 AND THE RULES MADE THERE UNDER AGAINST THE RESPONDENTS.

ORDER

The petitioner was a candidate at the last general election to the Patiala and East Punjab States Union Legislative Assembly from the Faridkot Constituency, held on 18th February, 1954 but later withdrew from the contest in that Constituency and contested a seat in another Constituency. The nine respondents were the other candidates. Out of them respondent No. 1 was duly returned and the other candidates were defeated. The petitioner in the capacity of an elector of the Faridkot Constituency has brought this petition u/s 81 of the Representation of People Act, 1951, calling in question the election of respondent No. 1 on the following grounds:—

1. That the nomination paper of respondent No. 1 was improperly accepted, as under article 191 clause (1) of the Constitution of India he was disqualified fro being elected on the ground of his holding an "Office of profit" under the Patiala & East Punjab States Union;

2. That the respondent No. 1 was guilty of the following corrupt and illegal practices at the time of the election, as a result of which the result of the election was materially affected:—

(a) That respondent No. 1 and his agents in contravention of the provisions of the Representation of People Act and Rule 118 of the Representation of People Act (Conduct of Election and Election Petition) Rules employed for payment a larger number of persons than is allowed by schedule VI of that Rule (*vide* full particulars given in schedule 'A').

(b) That the respondent No. 1 and his agents indulged in the corrupt Practice of obtaining and procuring and attempting to obtain and procure the assistance for the furtherance of the prospects of respondent No. 1 from persons serving under the State Government (*vide* full particulars given in schedule 'B').

(c) That the respondent No. 1 by himself and his agents on 18th February, 1954 committed the corrupt practice of procuring and using some trucks and cars for the conveyance of the electors to and from the polling station (*vide* full particulars given in schedule 'C').

(d) That the respondent No. 1 by himself and his agents committed the corrupt practice of incurring and authorising expenditure in connection with his election in excess of that permitted by Rule 117 and Schedule V of the Representation of People Act (Conduct of Election and Election Petition) Rules, 1951 (*vide* full particulars given in schedule 'D').

The petition was contested by respondent No. 1 alone. He traversed all the averments in the petition and raised the following further pleas:—

(a) That it was not open to the petitioner to raise the plea that the nomination paper of respondent No. 1 was improperly accepted and the election was void on that account;

(b) That the petition is barred by time;

(c) That the petition is not maintainable on the ground that the security purporting to have been deposited by the petitioner under section 117 of the Representation of People Act is not in order.

The following issues were framed on 19th October, 1954:—

1. Whether the nomination of respondent No. 1 was improperly accepted in-as-much as he held an office of profit under the PEPSU Government, and the result of the election has been materially affected thereby? If so, what is its effect?

2. Whether the plea of the petitioner which gave rise to issue No. 1 is not in order by reason of the fact that the petition does not contain any prayer for declaring the election to be wholly void?

3. Whether respondent No. 1 employed for payment in connection with his election persons other than or in addition to those prescribed by Rule 118 of the Representation of the People (Conduct of Election and Election Petitions) Rules, 1951, as specified in schedule 'A' appended to the petition, and the result of the election has been materially affected thereby? If so, what is its effect?

4. Whether respondent No. 1 or his agents or any other person with the connivance of respondent No. 1 or his agents obtained or procured or abetted or attempted to obtain or procure the assistance for the furtherance of respondent No. 1's election from persons serving under the Government of the PEPSU State other than giving of vote by such persons? If so, what is its effect?

5. Whether respondent No. 1 or his agents procured or used vehicles on 18th February, 1954 for the conveyance of electors (other than respondent No. 1 himself, the members of his family or his agents) to or from polling station, as specified in schedule 'C'? If so, what is its effect?

6. Whether the return of election expenses and the declaration verifying the same made by respondent No. 1 were false in material particulars? If so, what is its effect?

7. Whether respondent No. 1 or his agents incurred or authorised expenses on account of or in respect of the conduct and management of respondent No. 1's election in contravention of Rule 117 of the Representation of People (Conduct of Election and Election Petitions) Rules, 1951, and the result of the election has been materially affected thereby? If so, what is its effect?

8. Whether the present election petition is within time?

9. To what relief, if any, is the petitioner entitled?

10. What orders, if any, should be passed in this case under sections 98 & 99 of the Representation of People Act, 1951.

The following further issue was added on the application of respondent No. 1 on 11th May, 1955:—

11. Whether the deposit of Rs. 1,000 purporting to have been made u/s 117 of the Representation of People Act, 1951, is not in order? What is the effect of this finding?

Issue No. 1.—According to article 191 (1) of the Constitution of India, a person is disqualified from being chosen as and for being a member of the Legislative Assembly or Legislative Council of a State if he holds any office of profit under the Government of India or the Government of any State specified in the first schedule, other than an office declared by the legislature of the State by law not to disqualify its holder. The petitioner's case is that respondent No. 1, as the Ex-Ruler of Erst-while Faridkot State and as a member of the Council of Rulers established under the Covenant, entered into by the Rulers of the covenanting states, situated in the region which now constitutes the Patiala and East Punjab States Union, enjoys certain powers and privileges and receives the privy purse which brings him within the mischief of Section 191(1) of the Constitution of India. For a proper appreciation of this argument it will be well in the first instance to summarise the Covenant referred to above. The copy of the Covenant on the record shows that as far as it has a bearing on the facts of this case its salient features are as follows:—

1. The Covenanting States resolved to entrust to a Constituent Assembly, consisting of elected representatives of the people, the drawing up of a democratic constitution for the State, within the framework of the Constitution of India and the Covenant (Preamble of the Covenant).

2. There was to be a Council of Rulers of the Covenanting States. (Article III Clause 1).

3. The Council of Rulers was to exercise such powers as are assigned to it by the Covenant or as may be assigned to it by or under the Constitution (Article III Clause 2).

4. The Council of Rulers was to elect one member of the Council to be the President and another to be the Vice President of the Council and they were to act as Rajpramukh and Up-Rajpramukh respectively of the Union (Article III, Clause 3).

5. The present Rulers of Patiala and Kapurthala were to be the first President and Vice-President of the Council of Rulers respectively with effect from 15th July, 1948, and were to hold office during their life time.

6. Until such time as a Constitution was framed the Rajpramukh was invested with powers to promulgate ordinances. By a supplementary Covenant this power to promulgate ordinances was curtailed.

7. The Ruler of each covenanting State was entitled to receive annually from the revenues of the Union a certain fixed amount as his privy purse.

The learned counsel for the petitioner argued, that the fact that respondent No. 1 receives a privy purse, from the revenues of the Patiala and East Punjab States Union coupled with the fact that as a Member of the Council of Rulers he exercises certain administrative functions makes his position akin to the holder of an office of profit.

After carefully considering the matter, we find ourselves unable to accept this contention. In the first place it is not correct that the respondent No. 1 performs any administrative functions. It is true that originally the Covenant under which the Union was formed contemplated the formation of Council of Rulers. But apart from electing the Rajpramukh and the Up-Rajpramukh the Council was not required to perform any functions concerning the administration of the State. But even so the Council of Rulers never came into being. The Covenant did originally envisage its formation as well as the formation of a Constituent Assembly for framing the Constitution of Patiala and East Punjab States Union. But it must be remembered, that the Covenant was drawn up in 1948 at a time when it was not known what would be the future shape of the Constitution of India, and a couple of years later, the Constituent Assembly of India adopted a Constitution for the whole of India, including the covenanting States of Patiala and East Punjab States Union and other similar unions with the full concurrence of the Rulers of these States. The result was that the Covenants under which the Patiala and East Punjab States Union and other similar unions were formed, were abrogated except to the extent to which their provisions were incorporated in the Constitution of India. For instance the guarantees in the Covenant relating to the payment of privy purse and the enjoyment of personal privileges of the Ex-Rulers of the princely States found a place in the Constitution of India. But to the extent that the contents of the Covenant were not reproduced in the Constitution they were clearly abrogated. To this category belong the provisions of the Covenant relating to the creation of a Council of Rulers. For this reason the Council of Rulers contemplated by the Covenant was still-born. As an instance showing that the Council of Rulers never functioned it may be pointed out that on the death of the first Up-Rajpramukh, namely, His Highness the Raja of Kapurthala, his successor was never elected as provided in the Covenant. If the Council of Rulers were in existence, there is hardly any reason why such an election should not have taken place. The learned counsel for the petitioner frankly conceded that he has not been able to prove that the Council of Rulers ever functioned. However, from the fact that the original Covenant was later amended by a supplementary Covenant curtailing the powers of the Rajpramukh, in the matter of the issue of ordinances, counsel argued that it must be presumed that the Council of Rulers was functioning, otherwise the Covenant could not have been amended. Respondent No. 1 has explained in the witness box that the supplementary Covenant was not drawn up as a result of the deliberations of the Council of Rulers but that the signatures of the Ex-Rulers of the covenanting States on the supplementary Covenant were obtained individually by the Government of India. No evidence has been produced by the petitioner to rebut this contention. We have therefore no hesitation in holding that the Council of Rulers contemplated by the Covenant never came into existence. This conclusion completely knocks the bottom out of the petitioner's contention that respondent No. 1 is exercising any administrative functions as a Member of the Council of Rulers. The position then boils down to this that the respondent No. 1 is merely the recipient of a privy purse from the revenues of the Patiala & East Punjab States Union and the question for consideration is whether this fact alone makes him the holder

of an office of profit. The term 'office' in article 191(1) of the Constitution of India has not been defined anywhere. But the dictionary meaning of the expression 'office' is "That function by virtue whereof a person has some employment in the affairs of another; specifically, a public station or employment, conferred by the appointment of government and embracing the ideas of tenure, duration, emolument, and duties; as the office of president of a company; office of insurance commissioner" (Webster's dictionary, page 1162). The above definition of the word 'office' clearly connotes the employment of one person in the affairs of another and the performance of some duties for the latter. These elements are altogether absent in the present case. In lieu of the payment of the privy purse by the State Government the respondent No. 1 like all other Rulers is not required to perform any duties. On the contrary the payment of the privy purse is intended to be a sort of consideration for the Ex-Rulers surrendering the rights and privileges enjoyed by them in the former princely States. As such, the payment cannot be treated as emoluments appurtenant to an office. A similar view was taken by the Election Tribunal of Bilaspur in VI E.L.R. Page 87. For these reasons we hold that the mere fact that respondent No. 1 is the recipient of a privy purse is not tantamount to his holding an office of profit. We therefore decide this issue against the petitioner.

Issue No. 2.—In view of our finding on issue No. 1 this issue does not arise.

Issue No. 3.—According to Rule 118 of the Representation of the People (Conduct of Election and Election Petition) Rules, 1951, read with schedule VI, a candidate for election to the Legislative Assembly or his agent can only employ for payment the following persons in connection with his election:—

(1) One election agent, (2) One counting agent, (3) One Clerk and one messenger (4) One polling agent and two relief polling agents for each polling station, or where a polling station has more than one polling booth, for each polling booth, (5) One messenger for each polling station, or for each polling booth, if a polling station has more than one booth.

The petitioner's case is that instead of limiting the employment for payment of persons to the statutory number, the respondent No. 1 employed the whole of his staff consisting of a very large number of persons in connection with his election. The names of the persons actually alleged to be employed by respondent No. 1 are given in schedule 1 and their number is 54. In support of this contention the petitioner has produced a large volume of evidence showing that all the persons whose names are set out in schedule 1 besides some others were employed by respondent No. 1 for performance of various functions in connection with the election. So far as the petitioner's evidence relating to persons other than those whose names are given in schedule 1 are concerned it must be ignored as the petitioner cannot be allowed to take the respondent No. 1 by surprise and to make out a case different from that laid out in his pleadings. As far as the rest of the evidence is concerned, it is to the effect that all the persons mentioned in schedule 1 took part in canvassing votes for respondent No. 1, conveying voters from one place to another and performing other miscellaneous functions connected with the election. The evidence with regard to each person employed by respondent No. 1 is summarised below:—

1. *Mukhtiar Singh.*—In regard to Mukhtiar Singh the evidence comprises the statements of P.Ws. 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 74, 75, 87, 91, 92, 93, 99 and 101. Besides, this evidence is supported by respondent's witnesses Janga Singh (R.W. 26) and Tara Chand (R.W. 55).

2. *Kartar Singh.*—In regard to the participation of Kartar Singh in the election campaign the following witnesses gave evidence: P.Ws. 52, 53, 54, 55, 60, 61, 21, 87, 91, 92 and 93.

3. *Fateh Singh.*—Against Fateh Singh the evidence comprises the statements of P.Ws. 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 66, 67, 68, 95, 94, 96 and 97. This evidence is corroborated by Sandura Singh P.W. 104, a polling agent and an employee of respondent No. 1 and respondent No. 1's own witness No. R W. 9.

4. *Ranjit Singh.*—Against Ranjit Singh the petitioner produced the following witnesses.—P.Ws. 49, 50, 90 and 73. This evidence is also corroborated by the evidence of Jagdish Lal P.W. 84 a polling agent of respondent No. 1 and respondent No. 1's own witnesses R.Ws. 36, 37, 38 and 40.

5. *Jagir Singh.*—As against Jagir Singh the petitioner's evidence consists of the statements of P.Ws. 13, 14, 15, 17, 18, 19, and 20. That evidence finds further support in the respondent No. 1's own evidence *vide* statements of R.Ws. 43 and 59.

6. *Dr. Mohinder Singh.*—As against Dr. Mohinder Singh the petitioner's evidence consists of the statement of P.Ws. 22, 23, 24, 25, 26, 27 and 63. This evidence is corroborated by the statements of three polling agents of respondent No. 1, *viz.*, Jagdish Lal P.W. 84, Sandura Singh P.W. 104, Dharam Singh P.W. 105. Of these the first two were the employees of respondent No. 1 at the time of the election.

7. *Mukand Lal.*—In regard to Mukand Lal the petitioner's evidence comprises the statements of P.Ws. 22, 23, and 24 supported by respondent No. 1's polling agents P.Ws. 84 and 105.

8. *Gyani Gurbachan Singh.*—Against Gyani Gurbachan Singh the petitioner produced P.Ws. 22, 23 and 24.

9. *Jagdish Lal.*—So far as Jagdish Lal P.W. 84 is concerned he not only admits having worked for respondent No. 1 during the election campaign but his evidence is also supported by P.Ws. 44, 45, 77, 80 and 91.

10. *Pran Nath,* 11. *Raj Kumar,* 12. *Inder Singh Patwari.*—Against the above three persons the petitioner's evidence in regard to their participation in the election campaign consists of the statements of respondent No. 1's two polling agents Jagdish Lal P.W. 84 and Sandura Singh P.W. 104.

13. *Mal Singh.*—It is contended on behalf of the respondent that this person is not a regular employee but was only working as a labourer. So far as the question of [illegible] is concerned this fact makes [illegible] petitioner's evidence consists [illegible] P.W. 104.

14. *Arjan Singh, Chowkidar.* Against Arjan Singh chowkidar the only persons who gave evidence are P.Ws. 71, 78 and 81.

15. *Naib Singh.*—As against Naib Singh the petitioner's evidence consists of statements of P.Ws. 66, 67, 68, 10 and 104.

16. *Umrao Singh.* As against Umrao Singh the petitioner produced the following witnesses: P.Ws. 74, 77, 78, 70, 69, 82, 84, and 99.

17. *Bhag Singh.* As against Bhag Singh the petitioner's evidence consists of the statements of P.Ws. 84 and 100.

18. *Sham Singh.*—Against this person the petitioner produced P.Ws. 65, 72 and 79.

19. *Ajaib Singh (Sherewala).*—P.W. 72 alone gave evidence against this person.

20. *Ram Parkash.*—The only witness who deposes against this person is P.W. 84.

21. *Jagir Singh.*—In regard to this person the petitioner's evidence consists of the statements of P.Ws. 28, 29, 30, 31 and 42.

22. *Hazura Singh,* (23) *Lal Chand.*—As against these persons the petitioner's evidence consists of the statements of P.Ws. 32, 33, 34 and 35.

24. *Dalip Singh Gill.*—Against this person the petitioner's evidence consists of the statements of P.Ws. 84 and 43.

25. *Jm. Lal Singh.*—The petitioner produced the following witnesses against this person: P.Ws. 46, 47, 48, 71, 83 and 102.

The petitioner also produced the document Ex. P2 in support of his case. This document has three columns. In the first column the name and number of the polling stations is set out. The heading of the second column is "Officer on

duty". In this column the names of some persons most of whom are employees of respondent No. 1 are given. The third column is headed 'Assistants'. A very large number of names of persons most of whom are serving under respondent No. 1 are given in this column against each polling station.

The petitioner's contention is that all the persons who figure in this document joined in the election campaign on behalf of respondent No. 1.

Respondent No. 1 on the other hand denied having employed for payment more than the statutory number of persons. In support of this case he produced more than 199 witnesses. The sum total of their evidence is that employee of respondent No. 1 took part in his election campaign, that the canvassing for him was done only by four persons namely Gurdial Singh, his son Rajinder Singh R.W. 115 Pritam Singh and Sardul Singh R.W. 116. The evidence of most of these witnesses proceeds on a uniform pattern, namely that no employee of respondent No. 1 took part in the election campaign, that Gurdial Singh, Rajinder Singh, Pritam Singh and Sardul Singh did the entire canvassing for him and that these persons made four rounds in the constituency for this purpose and that respondent No. 1 himself also made one round of the constituency. Respondent No. 1 also gave evidence in the witness box and denied having made use of any of his regular employees in connection with the election campaign. In regard to Ex. P2 he suggested that it was a tentative list of persons to be employed by him as polling agents and was compiled by [illegible] Singh a son of one of his employees. This document contains some pencilled entries in the hand of respondent No. 1 himself.

Except for P2 the rest of the evidence of both the parties in connection with this issue is entirely oral. All oral evidence is inherently weak. Ordinarily we should have thought that there was not much to choose between the evidence of the two parties. But there are very cogent reasons why in this case the evidence of the petitioner must be accepted in preference to that of respondent No. 1. We base this view on the following reasons:—

1. The evidence of respondent No. 1 is glaringly [illegible] in one particular. [illegible] and odd [illegible] produced [illegible] No. 1 [illegible] R.W. 115 and [illegible] Singh R.W. [illegible] made four trips to the constituency to organize [illegible] campaign for respondent No. 1. This [illegible] witness [illegible]. The evidence of Rajinder Singh and Sardul Singh is also to the same effect. This version is however [illegible] the lie by respondent No. 1 himself according to whom [illegible] of Rajinder Singh and Sardul Singh made only three rounds of the constituency and not four. Such wholesale lying on the part of the Respondent's witnesses is not calculated to inspire confidence in their integrity.

2. The petitioner's evidence finds support from at least three of respondent No. 1's own polling agents *viz.* Jagdish Lal P.W. 84, Sandura Singh P.W. 104, Dharam Singh P.W. 105. The first two of them were in the service of respondent No. 1 at the time of the elections. It is interesting to note that when respondent No. 1 filed his list of witnesses the name of Jagdish Lal figured as one of his own witnesses, though it is now sought to be made out on behalf of respondent that he (Jagdish Lal) is a disgruntled person by reason of his having been dismissed from service for mis-conduct. But we are loth to accept this contention. The fact that Jagdish Lal was a dismissed servant must have been known to respondent No. 1 when he prepared his list of witnesses and we cannot believe that if he really considered him an aggrieved person he should have included his name in the list of his witnesses. In any case nothing whatsoever can be urged against Sandura Singh and Dharam Singh polling agents of respondent No. 1. These three persons were clearly in a position to know the true state of affairs and their evidence is therefore of great value.

3. The story of respondent No. 1 that his election campaign was organized by Sardul Singh, Gurdial Singh, his son Rajinder Singh and Pritam Singh only is very thin and sounds quite un-natural. The securing of votes in an election specially where a person like respondent No. 1 is pitted against two candidates backed by two powerful organizations like the Akalis and the Congress is ticklish affair. Only

a person who is in a position to exercise considerable influence locally and knows the electors can be expected to win votes successfully. Gurdial Singh, Sardul Singh and Pritam Singh undoubtedly live outside the constituency and it does not stand to reason that the Raja of Faridkot with the vast resources at his command would entrust his election campaign to the rank outsides with no pretence of commanding any influence in the constituency.

The story lacks even the merit of plausibility.

4. The matter is however clinched by Ex. P2. The petitioner's contention is that all the persons whose names figured in this document and most of whom are the employees of respondent No. 1 joined in the election campaign. On the other hand the respondent No. 1 has tried to make out that the document was a tentative list of persons who were to act as polling agents. After carefully considering the matter we have no hesitation in rejecting this plea. The circumstancial evidence in the case clearly points to the conclusion that Ex. P2 contains not merely a list of some persons who acted as polling agents but also a list of persons who performed duties in connection with the election other than those of polling agents. This is first of all clear from the fact that only 28 out 101 persons given in Ex. P2 worked as polling agents. There is one circumstance which more than anything else betrays the real nature of the document. It will be seen from P2 that there is one name in column No. 2 against the three polling stations of Madhar, Kingra and Sadaq. Similarly there is one name in column No. 2 against the two polling stations of Sukhanwala and Qila Nau. Against each polling station or group of polling stations the number of the names in column 3 exceeds two and in one instance it is 15. According to Rule 118, a candidate can appoint only one polling agent and two relief polling agents for each polling station. That being so, there is no sense in one officer being ear-marked for appointment as a polling agent for more than one polling station or as many as 15 persons being ear-marked for appointment as Relief Polling agents in one polling station. The inference is irresistible that all persons whose names are mentioned in P2 were not to perform merely the functions of polling agents but other duties as well in connection with the election campaign. This conclusion is underlined by the strange manner in which the witnesses of the respondent No. 1 re-acted when confronted with Ex. P2. The document was produced at the time of the cross-examination of respondent No. 1's witnesses. It does not bear the signatures of any person. By and large it is a typed document but it also bears three or four pencilled entries. According to the petitioner these entries are in the hand of respondent No. 1. For proving this fact the document was put to six of the Respondent's witnesses, namely Dyal Singh R. W. 74, Babu Ram R. W. 75, Dalip Singh R. W. 76, Kartar Singh R. W 82. Fateh Singh R. W. 84 and Mukhtiar Singh R. W. 109. The manner in which all these witnesses behaved in regard to this document makes a very interesting reading. Dyal Singh stated that he could identify both the signatures and hand-writing of respondent No. 1. Later on he said that he could only identify the signatures of respondent No. 1. In regard to the pencilled writings in Ex. P/2 he stated that they were not in the hand writing of Respondent No. 1. Babu Ram R. W. 75 stated that he could identify the signatures and hand-writing of respondent No. 1 as he had seen him writing several times and had received writings in his hand. When asked to identify the pencilled writings in Ex. P2, the witness merely stated that he could say nothing. Dalip Singh R. W. 76 stated that he could identify the hand-writing of respondent No. 1 and that the pencilled writings Ex. P2/A, P2/B, P2/C are in his hand. After the witness had made the reply Mr. K. C. Puri Counsel for respondent No. 1 suggested that the witness had not stated that the three penilled entries Ex. P2/A, P2/B, P2/C were in the hand of respondent No. 1 but that he had stated that "they may be in his hand-writing". The question was then repeated to the witness. He then took a somersault and stated that he was not quite certain whether the three disputed entries were in the hand of respondent No. 1. A note placed by us on the record shows that

the witness had clearly admitted in the first instance that the entries Ex. P2/A, P2/B, P2/C were in the hand of respondent No. 1 Kartar Singh R. W. 82 started by saying that he could identify the hand-writing and signatures of respondent No. 1 but denied that the three disputed writings Ex. P2/A, P2/B, P2/C were in his hand. Fateh Singh R. W. 84 stated that he could identify the hand writing of respondent No. 1 but could not say whether the writings Ex. P2/A, P2/B, P2/C were in his hand. To the same effect was the statement Mukhtiar Singh R. W. 109. Luckily when the document was put to respondent No. 1 himself in the witness box he had the good grace to admit that the pencilled writings were in his hand. The manner in which the respondent No. 1's witnesses funked, prevericated and perjured themselves when confronted with Ex. P2 and the way in which counsel for respondent No. 1 tried to help one of the witnesses who had unequivocally admitted the entries to be in the hand of respondent No. 1 to wriggle out of his statement suggests that it was not an entirely innocuous document like a tentative list of would-be polling agents but had more sinister implications for the respondent's case.

Learned counsel for respondent No. 1 challenged the evidence of the petitioner as being of a partisan character. In this connection he invited our attention to the fact that P.W. 99 was removed from the Lambardari by respondent No. 1, that P.W. 91 & 11 were the polling agents of a rival candidate Pritam Singh respondent, that he (respondent No. 1) holds decrees against P.Ws. 16, 17, 20, 18, and has filed suits against P.Ws. 88 & 46. Even if the evidence of these witnesses is disbelieved nothing whatsoever can be urged against the large number of remaining witnesses. Again learned counsel argued that the petitioner's evidence was full of discrepancies as to which of the respondent No. 1's employees was working at any particular place. There is nothing on the record to show that incidents regarding which each of the witnesses deposed occurred at the same time. Besides the powers of human observation and human memory vary from person to person and no two persons will give the same account of the same occurrence. In these circumstances such discrepancies are quite natural and in our opinion they are not sufficient to warrant a rejection of the petitioner's evidence.

To sum up then it is clear that 25 persons named in the foregoing paragraphs took part in the election campaign of respondent No. 1, apart from any duties they may have performed as polling agents. Now admittedly all these persons are paid employees of respondent No. 1. As their number exceeds the statutory number provided in Rule 118, respondent No. 1 is undoubtedly guilty of a major corrupt practice u/s 123 clause (7). A question however arises whether the fact that these persons were already in the employ of respondent No. 1 and were not specially engaged for purposes of election, would take them out of purview of Rule 118. In our judgment it would not. Any other view would lead to disastrous consequences. If a candidate were allowed not to count his existing employees who are detailed for election duty in computing the number allowed by Rule 118 it would place a poor candidate at a very grave disadvantage against a rich candidate. If a person like the Raja of Faridkot who has an army of servants were allowed to employ all of them without counting them for purposes of Rule 118 on the ground that they were already in his service, no other candidates would have a chance to stand up against him. The object of limiting the number of persons which a candidate can employ for purposes of election appears to be not only to keep down the expenses of election but also to see that a rich man with his vast resources is not placed in a position of vantage merely by reason of his wealth as against a poor rival. In the circumstances the only interpretation that we can put on Rule 118, against the background of the democratic set up which we have in India, would be that all the employees of a candidate whether specially employed for purpose of election or whether they were already in his service before the election would count for purposes of Rule 118, even if no additional payment is made to the existing employees for performing election duties additionally. In this view of the matter the employment by respondent No. 1 of 25 persons for purposes of Election clearly brings him within the ambit of Section 123 clause (7). As this amounts to a major corrupt practice which would avoid the election, without proof of the fact that the result of the election has been materially affected thereby, it is not necessary for us to go into the question whether the result of the election was materially affected in this case by reason of this commission of the corrupt

practice u/s 123 clause 7. Accordingly we find this issue in favour of the petitioner and hold that the Commission of the corrupt practice as envisaged in section 123 clause (7) stands proved.

Issue No. 4.—The petitioner's case is that out of the persons employed by the respondent in connection with his election the following are in the service of the Patiala and East Punjab States Union Government:—

(1) Ranjit Singh, (2) Fateh Singh, (3) Lal Singh, (4) Mukand Lal, (5) Umrao Singh, (6) Mukhtiar Singh, (7) Lal Chand.

The admitted facts in regard to these persons are that they were originally in the service of the erst-while Faridkot State that in 1944 before the formation of the Patiala and East Punjab States Union, the Raja of Faridkot separated his personal [illegible] from the State services and absorbed the above seven persons in it. They will continue to serve under him. It is contended by the petitioner that all these persons have a lien on Patiala and East Punjab States Union Government service and should be treated as officers on deputation. In this connection reliance is placed on Ex. PW3/3, PW1/1, PW1/2 and a circular letter issued by the Home Department of the Government of Patiala and East Punjab States Union dated 5th March, 1955. PW3/3 is a circular letter addressed by the Home Department of Patiala and East Punjab States Union Government the Chief Accounting Officer, Audit and Accounts Officer, Civil List Patiala and all Deputy Commissioners. By this letter information in regard to the civil list establishment of former princely States was called for with reference to the following three categories:—

"1. Those who were paid from the Civil List of the Rulers from the very beginning and whose liability in regard to pay and pension etc. did not even then fall on the State Government.

2. Those who were employed on the Civil List establishment after the date of separation of the Civil List from the Government budget; and

3. Those who on the date of separation of the Civil List actually held permanent and pensionable posts in the State though working as part of the Civil List establishment. This will include also persons who may have been deputed to the Civil List from Government service after the date of separation".

A copy of this letter was sent by the Deputy Commissioner Bhatinda, to the Controller of the Personal Estate of respondent No. 1 for compliance. In reply to this letter the Controller sent the letter Ex. PW1/2 to the Deputy Commissioner, Bhatinda. Attached to that letter is a list of employees who fall under category 3 of letter No. PW/3. (Vide Ex. PW/1). In the latter Ex. PW1/2 it was observed that respondent No. 1 desired to retain the services of 17 employees listed therein and the rest were declared surplus. Now it is common ground that the seven persons mentioned above figure in the list Ex. PW1/1. That is to say that they are persons who were form[illegible] the service of erst-while Faridkot State but who are now working on the [illegible] ment of Respondent No. 1. According to circular letter dated [illegible] No. His Highness the Rajpramukh of Patiala and East Punjab States [illegible] the following directions for dealing with category No. 3 of the letter Ex. PW3/3.

"(i) That there shall be no distinction between service rendered to the State or to the Ruler personally upto 15th August 1948, or upto the date of the separation of Civil List in each case, whichever is earlier.

(ii) That with effect from the date of separation of each Civil List Government employees who continued to work with the Rulers or were subsequently transferred to work with Rulers will be treated as on deputation with them and they will pay leave and pension contribution as prescribed in para 2 of Finance Department letter No. F. Estt. 11(8)66/16900 dated 30-6-52 read with Finance Deptt. letter No. even dated 19-6-53.

(iii) That the posts held by such employees substantively in Civil List from time to time shall be treated as substantive posts for the purposes of determining the rate of pension contribution".

It was argued for the petitioner that by virtue of the directions contained in letter Ex. PW3/3 and the circular letter dated 5-3-55 the seven persons noted above should be treated as having been integrated in the service of the Patiala and East Punjab States Union and treated as on deputation to the Civil List establishment of respondent No. 1. If these persons are treated as government servants on deputation to the civil list of respondent No. 1 there is no doubt that they and the respondent No. 1 would come within the mischief of clause (8) of Section 123, if they helped the respondent No. 1 in his election campaign. But after carefully considering the matter we are convinced that the status of these persons as Government servants does not stand clearly established. There is no doubt that letter No. PW3/3 and the circular letter dated 5-3-55 suggest that it is in the contemplation of the State Government to integrate all those persons who at one time held permanent and pensionable posts in the former Princely States but who were serving on their civil list establishment into the service of the Patiala and East Punjab States Union Government. But this integration has not been accomplished so far. There is nothing on the record to show that the seven persons mentioned above have been allocated against any substantive posts under the Patiala and East Punjab States Union Government. Therefore, till such time as integration takes place they cannot be treated as persons serving under the Government. Nor can the circular letter dated 5-3-55 be treated as proof of integration. It only shows that integration has been ordered. In any case the decision to integrate was taken on 5-3-55 and no integration had been ordered before the last general elections. We are therefore not convinced that the aforesaid persons have been integrated into the service of the Patiala and East Punjab States Union Government. A finding to the effect that these persons were government servants at the time of last general election will have far reaching consequences not only for respondent No. 1 but also for all these persons, as it will expose them to certain penalties. The proceedings relating to the trial of election petitions under sections 123 and 124 are of a quasi-criminal nature. Therefore like all criminal cases all the ingredients of the offence must be proved by the petitioner as the respondent's position is akin to that of an accused person. In criminal trials the accused is entitled to the benefit of doubt. In our view the question whether the aforesaid seven persons were government servants at the time of the last general elections has not been proved to the hilt. Therefore giving the respondent the benefit of doubt we hold this issue to be not proved.

Issue No. 5.—So far as this issue is concerned, the Petitioner's case is that respondent No. 1 made use of 9 trucks Nos. 377, 184, 367, 365, 192, 270, 103, 189 & 369 for conveying voters to and from the polling stations (vide schedule 'C'). How these trucks were procured is set out in the petitioner's statement before the court dated 19-10-54. According to that statement the trucks were procured as follows:—

> Truck No. 377 was procured by Dr. Mohinder Singh assisted by Gurbux Singh, Bhagwan Singh and Amrik Singh. Truck No. 184 was procured by Jagir Singh assisted by Ujjagar Singh and Hans Raj. Truck No. 367 was procured by Jagdish Lal assisted by Balbir Singh and Gurmail Singh. Truck No. 365 was procured by Benarsi Dass assisted by Sedagar Singh. Truck No. 192 was procured by Mukhtiar Singh Sandhu assisted by Bachan Singh driver and Giar Singh. Truck No. 270 was procured by Babu Ram assisted by Ranjit Singh and Joginder Singh. Truck No. 103 was procured by Jm. Shim Singh. Truck No. 189 was procured by Zora Singh. Truck No. 369 was procured by Dalip Singh with the help of Naib Singh and Jarnail Singh.

In support of these allegations the petitioner produced the following witnesses:— P.Ws—10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 28, 29, 30, 31, 38, 39, 40, 41, 42, 44, 45, 49, 50, 51, 52, 53, 61, 65, 72, 73, 79, 81, 84, 89, 90 and 99. These witnesses stated generally that some voters were carried to the polling stations and back by trucks provided by respondent No. 1. Some witnesses even mentioned the use of weapon carriers and tractors. But the witnesses could not give the names of the voters who were carried on trucks excepting one or two. Nor had the witnesses anything to say as to how the trucks were procured.

After carefully considering the evidence on the record we feel that the same is not enough to warrant a finding in favour of the petitioner on this issue. The evidence is highly vague and general. No witness was able to give the numbers

of the trucks used with the exception of one or two. The names of the voters who were carried were not disclosed by any of the witnesses. The allegation is that voters were varried in trucks on a large scale. If it is true that voters were carried in trucks on a large scale it should not have been difficult for the witnesses to give the names of the voters who were actually given a lift. In schedule 'C' as well as in the statement made by the petitioner on 19-10-54 no mention was made of the use of any tractor or weapon carrier. But some of the witnesses stated that both these types of vehicles were used. The petitioner's statement in regard to the use of at least two trucks is contradicted by respondent's evidence. According to petitioner's statement vehicle No. 192 Faridkot was a truck and was used for conveying the voters. But we have it on the testimony of S. Appar Singh Branch Manager R.W. 1 that vehicle No. 192 Faridkot was a Ford Deluxe Car which was insured with the Concord Insurance Co. Ltd. Ambala in 1952 and the policy still subsists. Again R. W. 3 Joginder Singh a partner in the firm of M/s. Joginder Singh Udham Singh of Delhi who deal in second hand motor parts stated that the firm purchased truck No. 270 Faridkot in June, 1952, as the same had been damaged in an accident. Lastly the fact that no written complaint was made to any authority in regard to any motor vehicles being used for conveying the voters proves more than anything else the falsity of the petitioner's case. Respondent No. 1 was pitted against two rival candidates backed by two well organized parties namely the Akalies and the Congress. If respondent No. 1 had made a free use of the trucks for carrying the voters in the manner alleged by the petitioner we cannot believe that the rival candidates or their agents would not have lodged a complaint before the authorities. It is impossible to sustain a charge of the use of motor vehicles against respondent No. 1 on such trumpery evidence. It is however contended for the petitioner that Sham Singh R. W. 80 a polling agent of respondent No. 1 admits that he went to the polling station on a truck. That is true but the charge which is the subject matter of this issue is that motor trucks were used for conveying voters to the polling station on which point Sham Singh had nothing to say.

Again learned counsel for petitioner invited our attention to two items of expenditure in the Return of election expenses of respondent No. 1. These are the cost of petrol purchased on 17-2-54 amounting to Rs. 66/14/- and the cost of petrol purchased on 18-2-54 amounting to Rs. 89/9/-. The polling was held on 18-2-54. Counsel argued that the fact that such a large quantity of petrol was purchased on the polling day or on the eve of the polling day would show that it must have been used in motor vehicles for purposes of conveying the voters. Now we have it on the testimony of respondent No. 1 that he made a tour of the whole of his constituency on the day of the polling. Therefore some petrol was bound to be consumed in connection with that trip. There is no evidence on the record to show what was the length of the entire journey performed by respondent No. 1 on the polling day. It is, therefore, difficult to judge whether the quantity of petrol purchased was in excess of the quantity that would normally have been required. It was the duty of the petitioner to cross examine respondent No. 1 and to ask him specifically how the petrol purchased on 17-2-54 and 18-2-54 was consumed but this was not done. Besides no objection was taken with regard to these items of expenditure either in the petition or in the schedule 'C' or in the petitioner's statement dated 19-10-54. Respondent No. 1 could not therefore be expected to volunter to explain the incurrence of these two items of expenditure. In the circumstances no presumption whatsoever can be raised against him in regard to these two items.

For the above reasons we are not convinced that the petitioner has proved that respondent No. 1 made use of motor vehicles for the conveyance of voters on the day of poll. We find this issue against the petitioner.

Issue Nos. 6 & 7.—These issues are intimately connected and may therefore be discussed together. The head and front of the charge against respondent No. 1 covered by these issues is that some unauthorised items of expenditure were incurred, that the return of expenses filed by respondent No. 1 is false and that the actual expenditure was far in excess of the limit prescribed by Rule 117 and schedule V of the Representation of People (Conduct of Election and Election Petitions) Rules, 1951. Full particulars relating to the charge are given in schedule 'D'. That schedule contains five heads of charges against the respondent No. 1. We shall deal with each of them separately.

(1) According to para 1, respondent No. 1 and his agents employed the services of his entire personal and household staff for furthering the

prospects of respondent No. 1's election, during the period from 1-1-54 to 18-2-54 and the expenses incurred on account of travel expenses, their allowances emoluments and entertainment have not been included in the return of expenses. We have held under issue No. 3 that respondent No. 1 did utilize the services of 25 of his employees for furthering his election prospects. Now there is no evidence on the record to show that these employees were engaged specifically for the purposes of election. All of them had been in the service of respondent No. 1 for a long time before the election in normal course. Therefore there is no reason why the emoluments paid should be charged to the election account. However if any additional allowances were paid to these persons that would certainly be chargeable to the election account. But there is no evidence on the record to show that any such allowance was paid. It may also be conceded that some expenses must have been incurred in connection with the journeys undertaken by these persons. But there is no definite evidence to show how much that expenditure amounted to The petitioner has not proved by any definite evidence how many trips each one of the employees of respondent No. 1 under-took and from which place to which place. In these circumstances we feel that though some expenditure must have been incurred in connection with the journeys under-taken by these persons, we are unable to assess the same for want of a criterion. In regard to the expenses for food incurred by respondent No. 1's employees there is no evidence on the record to show that it was furnished by respondent No. 1. On the contrary for aught we know these persons might have arranged for their meals at their own expense. In these circumstances we are not convinced that this head of charge is proved against respondent No. 1.

(2) According to para 2 of schedule 'D' respondent No. 1 and his agents procured and used 17 motor vehicles in connection with his election campaign and the expenditure incurred in that connection has not been accounted for in the Return of election expenses. So far as the use of 9 trucks for the conveyance of voters is concerned we have already held under Issue No. 5 that the allegation has not been proved. As far as the use of motor vehicle for other purposes is concerned it is probably correct that some motor vehicles were used. But here again the evidence produced by the petitioner is too vague and general to enable us to assess the expenses. We do not know exactly how many vehicles were used and how-often and what was the length of the journey performed by each. In the absence of such data it is impossible to assess this item of expenditure. We could therefore hold that his head of charge is also not proved.

(3) According to para 3 of schedule 'D' respondent No. 1 and his agents opened offices in all the villages for managing and controlling the election campaign and camps at all polling stations and had made elaborate arrangements for food, lodging and entertainment for his workers and agents but the expenditure incurred in this connection has not been accounted for in the Return of election expenses. Here again we find that the petitioner has led no satisfactory evidence. There is no definite evidence to show as to where the offices and camps were opened and how many persons manned each office and camp and what expenditure was actually or was likely to be incurred on such offices and camps. Similarly there is absolutely no evidence to show that any food was served to the workers or agents of respondent No. 1 at his expense. We would therefore hold that this head of charge also not to be proved.

(4) According to para 4 of schedule 'D' the respondent No. 1 engaged the services of Shri K. C. Puri Advocate on the date of scrutiny of nomination papers on payment of fees which have not been accounted for in the Return of election expenses. The petitioner has not produced any evidence to show that Mr. K. C. Puri received any fees for putting an appearance on behalf of respondent No. 1 on the day of the scrutiny of nomination papers. On the other hand Babu Ram R.W. 75 Legal Clerk to respondent No. 1 states that Mr. K. C. Puri was not paid any fees in connection with the appearance put in by him on the day of the scrutiny of the nomination paper and that he is a

part time Legal Adviser of respondent No. 1 and is being paid a salary of Rs. 600/- P.M. In the circumstances we hold this head of charge not to be proved.

(5) According to para 5 of schedule 'D' the amount spent on various other miscellaneous items by respondent No. 1 and his agents has not been entered in the return of election expenses. The allegations are too vague and general and call for no notice. In any case no evidence was produced in support of the allegations contained in this paragraph. We, therefore, hold this head of charge also not proved.

Learned counsel for the petitioner raised some further points in his arguments in addition to those dealt with in schedule 'D'. We shall now proceed to deal with them. The first point taken was that the pay of the drivers who drove the vehicles in connection with the election campaign has not entered in the Return of election expenses There is no evidence to show that any drivers were specifically engaged, for running the election campaign. And so far as the drivers in the permanent employ of the respondent No. 1 are concerned there is no reason why their pay which had to be paid in any case by respondent No 1 should go into the election account.

Our attention was then invited to the statement of respondent No. 1 in the witness box in which he admitted the use of a truck fitted with a loud speaker in Faridkot town for purposes of propoganda. "About the first half month of February". It was argued that this statement imported that the truck was used for two weeks but that the expenditure incurred in this connection has not been entered in the return of election expenses. Now it will be seen from voucher No. 55 accompanying the Return of election expenses that it relates to purchase of petrol used from 11-2-54 to 16-2-54. Learned counsel argued that this did not include the expenditure incurred from 1-2-54 to 11-2-54. This argument is purely specious. The words used by respondent No. 1 in his evidence were "Truck operated in town of Faridkot about the first half month of February, 54". The language used is certainly vague and slipshod. But we cannot certainly import into it the meaning that the truck was used for first half of the month. At any rate it was the duty of the petitioner to have cross-examined the respondent No. 1 at length on this point to draw out his real meaning. In the absence of positive evidence that the truck was used for exactly half of the month we must accept the explanation of respondent No. 1 that the expenditure incurred as alleged is proved by voucher No. 55.

Learned counsel for petitioner lastly argued that according to the Return of election expenses the price of only one set of voters list has been accounted for but that in reality a larger number of lists must have been used. Here again there is no warrant for this contention. So far as evidence goes, there is nothing to show that more than one set of voters list was used. On the other hand according to the respondent the solitary voters list purchased by him was split up into portions relating to each village and relevant portions was used at each polling station. There is nothing inherently wrong in this explanation and we have no hesitation in accepting it.

To sum up then we hold that none of the charges levelled by the petitioner against respondent No. 1 under these issues are proved. We decide the issues in the negative

Issue No. 8.—The relevant dates having a bearing on the question of limitation in this case are as follows:—

The notification regarding the lodging of the Return of election expenses was published in the Patiala and East Punjab States Union Government Gazette on 2-5-54. The petition was filed on 18-5-54. It is common ground that 16th & 17th May, 1954 were public holidays. According to Rule 119 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, an election petition calling in question an election may be presented at any time after the publication of the name of the returned candidate u/s 67 of the Representation of People Act, 1951 "but not later than 14 days from the publication of the notice in the official gazette under rule 113 that the return of election expenses of such candidate and the declaration made in respect thereof have been lodged with the Returning Officer". According to Rule 2 Clause VI of the Representation of the People (Conduct of Elections

and Election Petitions) Rules, 1951, the General Clauses Act applies for purposes of interpretation of those Rules as it applies for the interpretation of Acts of Parliament. Section 10 of the General Clauses Act is to the following effect:—

(1) "Where, by any Central Act or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period then, if the Court or office is closed on that day or the last day of the prescribed period, the act of proceeding shall be considered as done or taken on the next day afterwards on which the Court or office is open;

The notification regarding lodging of Return of election expenses having been published on 2-5-54, the last date for the filling of the election petition was 16th of May, 1954, but as 16th & 17th of May, 1954 were public holidays, the petition was filed on 18th May, 1954. Under Section 10 of the General Clauses Act which applies to this case, not only independently but also by virtue of Rule 2(6) of the Representation of People (Conduct of Elections and Election Petition) Rules, 1951, the petitioner is certainly entitled to exclude from computation, two days *viz.* 16th & 17th May, 1954, for purposes of limitation. Accordingly we hold that the petition was presented within time.

Issue No. 11.—According to Section 117 of the Representation of People Act, 1951, the petitioner is required to deposit Rs. 1000/-/- in the Government Treasury in favour of the Secretary to the Election Commission as security for the costs of the petition. The deposit was duly made in this case, but the challan filed in the office of the Election Commission shows that the deposit was not made in favour of the Secretary to the Election Commission. But column 3 of the challan contains the following entry:—

"Security money for filing election petition S. Karnail Singh V/S H.H. Raja Harinder Singh of Faridkot and others according to Section 117 Act XLIII of 1951".

On these facts the learned counsel for respondent No. 1 argued that since the deposit has not been made in favour of the Secretary to the Election Commission it must be ignored and the petition dismissed u/s 85 of the Representation of the People Act, 1951. In support of his contention the learned counsel relied upon VI.E.L.R. Page 401. In that case the receipt of deposit of security filed with the Election Commission was not in favour of the Secretary to the Election Commission, but of the Chief Electoral Officer, Bhopal. The Election Commission pointed out the defect to the petitioner and asked for a proper receipt without prejudice to the law, governing the case. A Proper receipt was filed but beyond the period of limitation for filing the petition. It was held by the Election Tribunal, Bhopal, that there was a violation of the mandetory provisions of Section 117 of the Representation of People Act, 1951, and the petition was dismissed u/s 85.

After carefully considering the arguments of the learned counsel we find ourselves unable to accept the contention of the Respondent No. 1's learned counsel. It is true that the name of Secretary to the Election Commission does not appear in column 3 of the challan of which the heading is "Name (or designation) and address of the persons in whose behalf money is paid". But the entry in column 4 clearly states that the deposit was made with reference to Section 117 of the Representation of People Act, 1951, which if paraphrased would mean that the deposit was made in favour of the Secretary to the Election Commission. The deposit must therefore be treated as having been made in favour of the Secretary to the Election Commission even though the challan does not say so in so many words. In our judgment there is a substantial compliance with the provisions of Section 117. The ruling cited by the learned counsel for Respondent No. 1 is distinguishable on the ground that the deposit in that case had been made in favour of some officer other than the Secretary of the Election Commission. In these circumstances we reject the Respondent's contention and decide this issue against him.

Issue No. 9 & 10.—As a result of our findings on issue No. 3 we have held that respondent No. 1 is guilty of the major corrupt practice under clause 7 of Section 123. By virtue of that finding the election of respondent No. 1 shall have to be declared void in view of the provisions of Section 100 clause 2(b). Accordingly we declare under section 98 that the election of H. H. Raja Harinder Singh

respondent No. 1 from Faridkot Constituency of the Patiala and East Punjab States Union Legislative Assembly is void.

So far as the operation of Section 99 is concerned, the declaration that the election of respondent No. 1 is void would automatically entail his disqualification in terms of Section 140 of the Representation of People Act, 1951. As we have not held any other person to be guilty of any corrupt or illegal practice it is not necessary for us to make any further order under section 99.

As a result of the above findings', we allow the petition and declare the election of Respondent No. 1 from Faridkot Constituency to be void.

As the petitioner has succeeded in proving only one out of the numerous charges levelled by him against the Respondent No. 1 we allow him only half the costs. Pleader's fee: Rs. 400/-/-. Announced to Petitioner and S. Ranjit Singh Counsel for respondent No. 1 and S. Gurcharan Singh counsel for respondent No. 8.

(Sd.) CHHAKAN LAL, *Chairman.*

(Sd.) KUL BHUSHAN, *Member.*

The 16th May, 1956.

(Sd.) G. M. KEHRE, *Member.*

ANNEXURE I.

IN THE SUPREME COURT OF INDIA.

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 132 OF 1956.

H. H. Raja Harinder Singh—*Appellant.*

Versus

S. Karnail Singh and others—*Respondents.*

JUDGMENT

VENKATARAMA AIYAR J:

The Appellant was one of the candidates who stood for election to the Legislative Assembly of the Patiala and East Punjab States Union from the Faridkot Constituency in the General Elections held in 1954. He secured the largest number of votes, and was declared duly elected. The result was notified in the Official Gazette on 27-2-1954, and the return of the election expenses was published therein on 2-5-1954. On 18-5-1954, the first respondent filed a petition under section 81 of the Representation of the People Act, No. XLIII of 1951, hereinafter referred to as the Act, and therein he prayed that the election of the appellant might be declared void on the ground that he and his agents had committed various corrupt and illegal practices, of which particulars were given. The appellant filed a written statement denying these allegations. He therein raised the further contention that the election petition had not been presented within the time limited by law, and was therefore liable to be dismissed. Rule 119, which prescribes the period within which election petitions have to be filed, runs, so far as it is material, as follows:

> 119. "*Time within which an election petition shall be presented.*—An election petition calling in question an election may,—
>
> (a) in the case where such petition is against a returned candidate, be presented under section 81 at any time after the date of publication of the name of such candidate under section 67 but not later than fourteen days from the date of publication of the notice in the Official Gazette under rule 113 that the return of election expenses of such candidate and the declaration made in respect thereof have been lodged with the Returning Officer;"

The last date for filing the petition, according to this Rule, was 16-5-1954, but that happened to be a Sunday and the day following had been declared a public holiday. The first respondent accordingly presented his petition on 18-5-1954, and in paragraph 6 stated as follows:

> 'The offices were closed on 16th and 17th; the petition is, therefore, well within limitation."

on this, the Election Commission passed the following order:

> "The petition was filed on 18-5-1954. But for the fact that 16-5-1954 and 17-5-1954 were holidays, the petition would have been time-barred. Admit".

The plea put forward by the appellant in his written statement based on Rule 119(a) was that whatever might have been the reason therefore, the fact was that the petition had not been filed "not later than fourteen days" from the publication of the return of the election expenses, which was on 2-5-1954, and that it was therefore not presented within the time prescribed. The Tribunal overruled this plea on the ground that under Rule 2(6) of the Election Rules, the General Clauses Act X of 1897 was applicable in interpreting them, and that under section 10 of that Act, the election petition was presented within the time allowed by Rule 119(a). On the merits, the Tribunal held that of the grounds put forward, in the Election Petition, one and only one had been substantiated, and that was the appellant had employed for payment, in connection with his election, 25 persons in addition to the number of persons allowed under Rule 118 read along Schedule VI thereto, and had thereby committed the major corrupt practice mentioned in section 123(7) of the Act. The Tribunal accordingly declared the election void under section 100(2) (b) of the Act. It also observed that on its finding aforesaid, the appellant had incurred the disqualification enacted in sections 140(1) (a) and 140(2) of the Act. Against this decision, the appellant has preferred this appeal by special leave.

On behalf of the appellant, two contentions have been pressed before us: (1) that the election petition was presented beyond the time prescribed by Rule 119(a), and should have been dismissed under section 90(4) of the Act; and (2) that on the findings recorded by the Tribunal, the conclusion that Rule 118 had been contravened does not follow and is erroneous.

The first question turns on the interpretation of section 10 of the General Clauses Act, which is as follows:

> "Where, by any Central Act or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or *within a prescribed period*, then if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken on the next day afterwards on which the Court or office is open."

The contention of the Solicitor-General on behalf of the appellant is that this section can apply on its own terms only when the act in question is to be done "within a prescribed period", that under Rule 119(a) the petition has to be filed "not later than" fourteen days, that the two expressions do not mean the same thing, the words of the Rule being more peremptory, and that accordingly section 10 of the General Clauses Act cannot be invoked in aid of a petition presented under Rule 119, later than fourteen days. In support of this contention, he invites our attention to some of the Rules in which the expression "the time within which" is used, as for example, Rule 123, and he argues that when a statute uses two different expressions, they must be construed as used in two different senses. He also points out that whenever the legislature intended that if the last date on which an act could be performed fall on a holiday, it could be validly performed on the next working day, it said so, as in the proviso to section 37 of the Act, and that there would be no need for such a provision, if section 10 of the General Clauses Act were intended generally to apply.

This argument proceeds on an interpretation of section 10 of the General Clauses Act which, in our opinion, is erroneous. Broadly stated, the object of the section is, to enable a person to do what he could have done on a holiday, on the next working day. Where, therefore, a period is prescribed for

the performance of an act in a court or office, and that period expires on a holiday, then according to the section the act should be considered to have been done within that period if it is done on the next day on which the court or office is open. For that section to apply, therefore, all that is requisite is that there should be a period prescribed, and that period should expire on a holiday. Now, it cannot be denied that the period of fourteen days provided in Rule 119(a) for presentation of an election petition is a period prescribed, and that is its true character, whether the words used are "within fourteen days" or "not later than fourteen days". That the distinction sought to be made by the appellant between these two expressions is without substance will be clear beyond all doubt, when regard is had to section 81 of the Act. Section 81(1) enacts that the election petition may be presented *"within such time as may be prescribed"*, and it is under this section that Rule 119 has been framed. It is obvious that the rule-making authority could not have intended to go further than what the section itself had enacted, and if the language of the Rule is construed in conjunction with and under the coverage of the section under which it is framed, the words "not later than fourteen days" must be held to mean the same thing as "with a period of fourteen days". Reference in this connection should be made to the heading of Rule 119 which is, "Time *within which* an election petition shall be presented". We entertain no doubt that the legislature has used both the expressions as meaning the same thing, and there are accordingly no grounds for holding that section 10 is not applicable to petitions falling within Rule 119.

We are also unable to read in the proviso to section 37 of the Act an intention generally to exclude the operation of section 10 of the General Clauses Act in the contruction of the Rules, as that will be against the plain language of Rule 2(6). It should be noted that that proviso applies only to section 30(c) of the Act, and it is possible that the Legislature might have considered it doubtful whether section 30(c) would, having regard to its terms, fall within section 10 of the General Clauses Act and enacted the proviso *ex abundanti cautela*. The operation of such a beneficent enactment as section 10 of the General Clauses Act is not, in our opinion, to be cut down on such unsubstantial grounds as above been urged before us. We are accordingly of opinion that the petition which the respondent filed on 18-5-1954 is entitled to the protection afforded by that section and is in time.

We should add that the appellant also raised the contention that if we agreed with him that the election petition was not presented in time, we should hold that the order of the Election Commission admitting the petition was not one of condonation within the proviso to section 85, because that proceeded on the footing that the petition was in time, and did not amount to a decision that if it was not, there were sufficient grounds for excusing the delay. We are not disposed to agree with this contention; but in the view which we have taken that the petition is in time, it is unnecessary to consider it.

Then the next question—and that is one of substance—is whether there has been contravention of Rule 118. The material facts are that the appellant is the *quondam* ruler of Faridkot, which enjoyed during the British regime the status of an independent State, and came in for judicial recognition as such in *Sirdar Gurdval Singh* v. *Rajah of Faridkot* (1), and after Independence, became merged in the State of PEPSU. The appellant continues to retain a large staff of subordinates, and the charge of the first respondent in his petition was that as many as 54 of them were employed for purposes of election, and that Rule 118 had thus been violated. Rule 118 is as follows:

> "No person other than, or in addition to, those specified in Schedule VI shall be employed for payment by a candidate or his election agent in connection with an election."

Under Schedule VI, a candidate for election may employ for payment in connection with election (1) one election agent, (2) one counting agent, (3) one clerk and one messenger, (4) one polling agent and two relief polling agents for each polling station or where a polling station has more than one polling booth, for each polling booth and (5) one messenger for each polling station, or for each polling booth, if a polling station has more than one booth. The finding of the Tribunal on this question is as follows:

> "...It is clear that 25 persons named in the foregoing paragraphs took part in the election compaign of respondent No. 1 apart from any duties they may have performed as polling agents. Now admittedly

(1) (1893-94) L.R. 21 I.A. 171.

all these persons are paid employees of respondent No. 1. As their number exceeds the statutory number provided in Rule 118, respondent No. 1 is undoubtedly guilty of a major corrupt practice under section 123(7). A question however arises whether the fact that these persons were already in the employ of respondent No. 1 and were not specially engaged for purposes of election, would take them out of purview of Rule 118. In our judgment it would not."

Then, dealing with the question as to whether the return of election expenses made by the appellant was false in that it did not include anything on account of the services of the 25 employees, the Tribunal says:

"We have held under Issue No. 3 that respondent No. 1 did utilise the services of 25 of his employees for furthering his election prospects. Now there is no evidence on the record to show that these employees were engaged specifically for the purposes of election. All of them had been in the service of respondent No. 1 for a long time before the election in normal course. Therefore there is no reason why the emoluments paid should be charged to the election account. However, if any additional allowances were paid to these persons that would certainly be chargeable to the election account. But there is no evidence on the record to show that any such allowance was paid."

Now, the question is whether on these facts there is a contravention of Rule 118. The contention of the Solicitor General for the appellant is that the Rule would apply only if the employment of the persons was specifically for work in connection with the election and such employment was for payment. In other words, according to him it is only employment *ad hoc* for the election that is within the mischief of the Rule. On behalf of the respondent Mr. N. C. Chatterjee contends that it is not necessary for the Rule to operate that there should have been an employment specially for the purpose of the election, and that it would be sufficient if the persons who did work in connection with the election were in the employment of the candidate, and that employment carried with it payment of salary or remuneration.

In our opinion, neither of these contentions is wellfounded. Rule 118 does not require that the person engaged by a candidate to work in the election should have been specially employed for the purpose of the Election. It is sufficient, on the wording of the Rule, that that person is employed in connection with the election. At the same time, the requirements of Rule 118 are not satisfied by proving merely that the person does work in connection with the election. That work must be done under a contract of employment. Thus, if the candidate has been maintaining a regular staff of his own and its members have been doing personal service to him and he has been paying them and then the election supervenes, and off and on he sets them on election work but they continue to do their normal work as members of his staff, it cannot be said of them that they have been employed in connection with the election. But if, on the other hand, he takes them out of their normal work and puts them on whole-time or substantially whole-time work in connection with the election, that would amount to converting their general emplyoment into one in connection with the election. It will be a question of fact in each case whether what the candidate has done amounts merely to asking the members of the staff to do casual work in connection with the election in addition to their normal duties, or whether it amounts to suspending the work normally done by them and assigning to them election work instead.

Then again, it is a condition for the application of the Rule that the employ ment of the person must be for payment. If the members of the staff continue to do their normal work and do casual work in connection with the election, the payment of salary to them would be a payment on account of their employment as such members of the staff and not in connection with the election. Rule 118 would not apply to that case, as there is neither an employment in connection with the election, nor a payment on account of suche mployment. Indeed, the salary paid to the members would not even be election expenses liable to be included in the return. But if, in the above case, the members are paid extra for their work, such extra payment will have to be included in the return of election expenses, though it may be that Rule 118 itself might have no application for the reason that there is no employment for election and the payment is not in respect of such employment. If however, the members of the staff are switched off from their normal work and turned on to election work so that it could be said

that that work has been assigned to them in supersession of their normal work, then the salary paid to them could rightly be regarded as payment for work in connection with election within Rule 118. That being our view on the construction of Rule 118, we shall now proceed to consider what the position is, on the authorities cited before us.

In the Hartlepooles Case (2), the question arose with reference to one Butler who was the general secretary of Mr. Furness, the returned candidate, and certain clerks in a company in which Mr. Furness had considerable influence. All these persons had taken part in the election. As regards Butler, Phillimore J. observed that if it could be held that at the time of his employment his duties included also work in elections if and when they were held, then a proportionate part of his salary should be regarded as election expenses; but on the facts, he held that it was no part of the duties of Butler in respect of his standing employment to be election agent when called upon, and that therefore no part of his salary need be shown as election expenses. As put by Pickford J. in his concurring judgment, Butler was paid "his salary as private secretary and as not paid anything as election agent". Counsel for the appellant relies on these observations, and argues that on the finding of the Tribunal that the 25 men had been in service for a long time, there could be no question of their having been employed for work in connection with election, and that they were therefore neither election agents nor was the salary paid to them payment on account of any employment in connection with the election. But then, considering the effect of the clerks of the compan taking part in the election, Phillimore J. observed:

> . I am certainly inclined to think that if a business man takes his business clerks and employs them for election work which, if he had not business clerks, would be normally done by paid clerks, he ought to return their salaries as part of his expenses."

Counsel for respondent strongly relies on these observation. But then, the point was not actually decided by Phillimore J, as the evidence relating to the matter was incomplete, and Pickford J expressly reserved his opinion on the question. In view of the remarks of Sankey J in the *Borough of Oxford Case* (3) in the course of his argument, it is doubtful how far the observations of Phillimore J quoted above could be accepted as good law. They were, however, adopted in two decisions of the Election Tribunals of this country, to which our attention was invited by Mr. Chatterjee.

In the Amritsar Case (4), the following observation occurs:—

> "We also consider that if any man in the service of the respondent were put on election work, their wages for the period should have been in the return. (See *Hartiepolls Case*) (2)".

The words "put on election work" in the passage suggest that the employees had been taken out of their original work. As there is no discussion of the present question, the authority of this decision is, in any event, little. In *Farrukhabad Case* (5), this passage as also the observations of Phillimore J were quoted, and in accordance therewith, it was held that "the salaries of Tilakdhari Singh. Kundan Singh and Drigpal Singh for the period they worked in connection with the election of the respondent No. 1 should have been shown in the return". It was found in that case that Tilakdhari Singh worked exclusively for 30 days in connection with the election and Kundan Singh and Drigpal Singh would appear to have similarly devoted themselves to election work for certain periods. None of these cases has considered what would amount to employment in connection with election, when the persons had been previously employed on other work; and they throw no light on the present question.

The position may thus be summed up:

(1) For Rule 118 to apply, two conditions must be satisfied, *viz*, there should have been an employment by the candidate of a person in connection with an election, and such employment should have been for payment:—

(2) Where a person has been in the employment of the candidate even prior to his election and his duties do not include work in election and he takes part

(2) 6 O'M & H.1 (3) 7 O'M & H.49 at pages 56-57

(4) Hammond's Election Cases 83 (5) Hammond's Election Cases 349.

in election, whether he is to be regarded as employed in connection with the election will depend on the nature of the work which he performs during the election.

(3) When the work which he does in election is casual and is in addition to the normal work for which he has been employed, he is not within Rule 118. But if his work in connection with the election is such that he could be regarded as having been taken out of his previous work and put on election work, then he would be within Rule 118.

(4) Whether a person who has been previously employed by the candidate on other work should be held to have been employed in connection with election is a question of fact to be decided on the evidence in each case.

In the present case, the finding is that 25 persons belonging to the staff of the appellant had taken part in the election. It has been found that they had been in the service of the appellant for a long time and that their appointment was not colourable for election purposes. It has also been found that they were not paid anything extra for what work they might have done in connection with the election. But there is no finding that having regard to the work which they are proved to have done, they must be taken to have been relieved of their original work and put on election work. In the absence of such a finding, it cannot be held that Rule 118 had been infringed. It is possible that the Election Tribunal did not appreciate the true legal position and has in consequence failed to record the findings requisite for a decision on Rule 118, and that would be a good ground on which we could, if the justice of the case required it, set aside the order and direct the matter to be heard afresh and disposed of by another Tribunal in accordance with law. But we do not consider that this is a fit case for passing such an order. The evidence adduced by the first respondent is very largely to the effect that the appellant's men did election work in the morning or in the evening, that is, out of office hours. That shows that the work of the staff was in addition to their normal duties, and on the principles stated above, they could not be held to have been employed in connection with the election. As the first respondent does not appear himself to have understood the true position under Rule 118 and has failed to adduce evidence requisite for a a decision of the question, he must fail, the burden being on him to establish that that Rule had been infringed.

In the result, this appeal is allowed, the order of the Election Tribunal is set aside and the election petition of the first respondent will stand dismissed. As the parties have each succeeded on one issue and failed on another, they will bear their own costs throughout.

(Sd.) N. H. BHAGWATI J

(Sd.) T. L. V. AIYAR J

(Sd.) B. P. SINHA J

(Sd.) S. K. DAS J

The 20th December 1956.

[No. 82/14/54/228.]

By Order,

A. KRISHNASWAMY AIYANGAR, Secy. to the Election Com.

PRINTED IN INDIA BY THE GENERAL MANAGER, GOVT. OF INDIA PRESS, NEW DELHI AND PUBLISHED BY THE MANAGER OF PUBLICATIONS, DELHI, 1957